

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-2315

PETITION OF MARCELLO ZENTENO

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution Adopted May 22, 2002)
(Effective Date of Resolution: June 26, 2002)

EVIDENCE PRESENTED TO THE BOARD

1. Case No. S-2315 is a special exception granted by the Board of Appeals on May 28, 1998, to Marcello Zenteno, pursuant to Sections 59-C-6.2 and 59-G-1.21 of the Montgomery County Zoning Ordinance, to permit an automobile repair and service station.

2. The subject property is Lots 33 and 34 +/-, Block A, Blair Subdivision, located at 919 Gist Avenue, Silver Spring, Maryland, in the CBD-0.5 Zone.

3. On December 8, 2000, Stanley N. Garber, Zoning Investigator, Montgomery County Department of Permitting Services (DPS) issued a Notice of Violation to Marcello Zenteno for non-compliance of the use with the terms and conditions of the special exception as follows:

- Violation of Condition No. 10 - parking overnight;
- Violation of Condition No. 2 - excessive parking on front lot;
- Violation of Condition No. 3 - property deviates from the landscape and lighting plan approved by MNCPPC;
- Cease all repair work on cars outside the building;
- Remove the shed from the property.

4. On October 5, 2001, Mr. Garber issued a Notice of Violation to Marcello Zenteno for non-compliance of the use with the terms and conditions of the special exception as follows:

- Signs on building without issued sign permits.
- Derelict cars on site and exceeding the marked areas for parking.

5. By memoranda dated May 29, 2001 [Exhibit No. 31] and December 4, 2001 [Exhibit No. 33] Mr. Garber advised the Board of continuing violation of the terms and conditions of the special exception. Mr. Garber requested that the Board convene a show cause hearing pursuant to Section 59-G-1.3(e) of the Zoning Ordinance to resolve the violations.

6. On the basis of Mr. Garber's memoranda, on May 22, 2002, the Board of Appeals convened a public hearing for the special exception holder to appear and address the unresolved issues in the Notices of Violation and to show cause why the special exception should not be revoked.

7. Mr. Garber appeared at the hearing and stated that the violations which remained outstanding were:

- Exceeding the marked areas for parking.
- The plywood shown in Exhibit No. 38 violates the requirement for sign permits.

8. Mr. Zenteno also testified and stated that he has had difficulty controlling the number of customers who arrive on a given day. He stated that he has implemented a practice of only accepting customers by appointment, and that he now has an employee dedicated to moving cars to the adjacent public parking lot. He also requested permission from the Board to use a removable sign which he could place in the parking area to alert customers that the lot is full.

FINDINGS OF THE BOARD

Section 59-G-1.3(e)(6) of the Zoning Ordinance provides that at the conclusion of a show cause proceeding, "[t]he Board, by the affirmative vote of at least 4 members, may reaffirm or revoke the special exception, or amend, add to, delete or modify the existing terms or conditions of the special exception."

Condition Number 10 of the Board of Appeals May 28, 1998 Opinion granting the special exception states:

There will be no storage or repair of vehicles on Gist Avenue.

The Board finds that the special exception holder has made good faith efforts to correct the issues in the Notices of Violation.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that Case No. S-2315, Petition of Marcello Zenteno is **reaffirmed** and **modified** as follows:

1. The special exception holder will keep a log of all incoming cars.

2. Parking shall not exceed the spaces marked on the lot.
3. Overflow parking must be in the nearby public parking lot. The special exception holder will employ a temporary sign, removed and replaced every day, to direct excess cars to that location.
4. Within 30 days of the effective date of this Resolution, the special exception holder will remove the plywood depicted on Exhibit No. 38.
5. That all terms and conditions of the original special exception, except as modified herein, shall remain in full force and effect.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman; in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion state above is adopted as the Resolution required by law as its decision on the above-entitled case.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 26th day of June , 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.